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Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Roy B. Smith, of Roanoke, and *Marshall McCormick*, of Berryville, for plaintiff in error.

Ward & Larrick, of Winchester, for defendant in error.

BOARD OF SUP'RS OF CULPEPER COUNTY *v.* COONS.

COONS *v.* BOARD OF SUP'RS OF CULPEPER COUNTY.

Nov. 15, 1917.

[94 S. E. 201.]

1. Counties (§ 75 (1)*)—Compensation of Clerk—Powers of Supervisors.—The board of supervisors has no discretion to refuse to act in fixing the compensation and other allowances of a county clerk within the limits prescribed and allowed by law, or, if it acts, to impose a condition or conditions upon the payment of such compensation on the ground that the clerk has not performed, or is not performing, his duties, the position of county clerk not being created by the board, but by law.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 667, 682.]

2. Counties (§ 74 (2)*)—Clerk—Interest on Salary.—The county clerk was not entitled to interest on unpaid balances of his salary and allowances fixed by the board of supervisors.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 682.]

3. Counties (§ 74 (2)*)—County Clerk—Additional Compensation to Salary.—Plaintiff was elected and qualified as county clerk of the circuit court in 1893, and has continued in office by successive elections and qualifications to the present time. Code 1887, § 3184, as amended by Acts 1891-92, c. 471, provided that the court of every county wherein a general index to the deed books, will books, judgment lien docket books in the clerk's office has not been provided and has become so defaced as to render another general index necessary, or wherein the index does not show the Christian names or the initials of the grantor, etc., may, in its discretion, appoint a suitable person to make a general index of such deed books in the full names of the grantor and grantee, and a general index to the will books, judgment lien docket books, and shall certify a proper allowance to the person so appointed as compensation. It is further provided that it shall be the duty of the clerk of every court to index all the recorded deeds, wills, docketed judgments, as well in the general index as in the deed books, etc. Pursuant to said section, the circuit court entered an order by which plaintiff was elected and ap-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

pointed to make a general index to certain of the deed books, etc., in accordance with the statute. Prior to the order there was in use a general index system, which was not ledgerized, and from long use had become defaced. Pursuant to the court's order plaintiff adopted a system which was in excess of what the statute required to the extent that it ledgerized the general indexing in addition to having it show the Christian names or initials. Held, that plaintiff was not entitled to compensation in addition to his salary for indexing deeds, etc., recorded in his office after the date of the order in the books used under the system adopted.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 682.]

4. Counties (§ 74 (2)*)—Clerk—Compensation in Addition to Salary.—That the court by prior orders allowed and the board of supervisors approved the payment of similar claims would be immaterial in determining whether the county clerk's claim for compensation in addition to salary was properly refused.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 682.]

5. Counties (§ 75 (1)*)—Additional Compensation to Clerk—Authority of Supervisors.—If the circuit court by an order allowed the claim of the county clerk for recording and indexing, etc., during his term, the order was without authority of law, and, being still executory, the board of supervisors had no authority to direct a warrant therefor.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 667, 682.]

6. Registers of Deeds (§ 5*)—County Clerk—Duty—Indexing Books.—When the county failed to furnish books for the system adopted, the county clerk returned to the old general index system in use in the office prior to the court's order requiring a more extensive system, and did the general current indexing by such system, which met the requirements of the law under which the court order was made. Held, that it was not the duty of the county clerk to general index the current recorded deed, will, and judgment docket books in his office which accumulated after failure to furnish books for the system adopted in some general index system which might be provided.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 688.]

7. Mandamus (§ 172*)—Scope of Inquiry.—In original proceedings in mandamus the Supreme Court is confined to a consideration of the facts as they exist and to the inquiry whether any rights of the parties thereunder are enforceable by mandamus.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 539.]

8. Registers of Deeds (§ 5*)—County Clerk—Change in System of Recording—Condition Precedent.—Under Acts 1891-92, c. 477, Acts 1912, c. 283, and Acts 1916, c. 201, with reference to adoption of im-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

proved index system, action by the circuit court adopting a general index system is a condition precedent to the ascertainment of what general index system, other than that previously in use, it is the duty of the county clerk to use in indexing records in his office.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 688.]

9. Counties (§ 78 (1)*)—County Clerk—Fees.—The county clerk was entitled to the fee allowed by Code 1904, § 3505, for recording a deed to the county in addition to the allowance of \$50 made by the board of supervisors for road services, where such allowance was not made to cover recordation fees.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 682.]

Original mandamus proceedings by the Board of Supervisors of Culpeper County against W. E. Coons, and by W. E. Coons against the said Board of Supervisors. Denied in first cause, and awarded in part as prayed in second cause.

Edwin H. Gibson, of Culpeper, for Board of Supervisors of Culpeper County.

Hiden & Bickers, of Culpeper, and *Gilmer & Stant*, of Bristol, for Coons.

BABER et al. v. BABER et al.

Nov. 15, 1917.

[94 S. E. 209.]

1. Evidence (§ 178 (2)*)—Writings—Best Evidence—Lost Original.—Where the original writing has been lost, but there exists a copy made by an attorney, not authenticated by the clerk, but there is no other copy, such copy is admissible as the best evidence.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 364.]

2. Adverse Possession (§ 70*)—"Color of Title"—What Constitutes.—"Color of title" must be by writing purporting to pass title containing sufficient terms to designate the land, though conveying no title.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Color of Title.* For other cases, see 1 Va.-W. Va. Enc. Dig. 206.]

3. Adverse Possession (§ 72*)—Color of Title—What Constitutes.—An instrument, called a bill of bargain and sale, naming the parties, reciting that one sold to the other certain lands, describing them, for one-half the merchantable fruit on the place, the grantee to furnish the grantor's wife board and lodging during her lifetime, under which

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.